

(2004) 10 MP CK 0044

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 1660 of 2004

Smt. Dharma Bai Thakur and Others

APPELLANT

Vs

Smt. Usha Rani Dixit and Others

RESPONDENT

Date of Decision : 27-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 10(4), 7, 7(2)

Citation : (2004) 4 MPHT 417 : (2005) 1 MPLJ 129

Hon'ble Judges : S.K. Pande, J

Bench : Single Bench

Advocate : Ramesh Shrivastava, for the Appellant;

Final Decision : Dismissed

Judgement

S.K. Pande, J.

Arguments heard.

This petition under Order XLVII Rule 1, CPC, is for review of order dated 30-7-2004, passed by this Court in C.R. No. 1256/03 Smt. Usha Rani and Others Vs. Smt. Dharma Bai Thakur and Others,

In C.R. No. 1256/2003, the following order was passed :--

"This revision u/s 115, CPC is directed against the order dated 28-10-2003, passed by V ADJ, Jabalpur in C.A. No. 60-A/2003, affirming the order dated 30-4-2003, passed by RCA, Jabalpur in Case No. 19-A/90 (1)/2002.

Respondents are tenants of the petitioners in the suit house. On 24-9-2002, they filed application before the RCA seeking fixation of standard rent under Sections 7, 10 of the M.P. Accommodation Control Act (hereinafter referred to as the "Act"). The application aforesaid has been resisted by the petitioners stating inter alia that the contractual rent of the suit house is Rs. 195/- p.m. and in any

case the standard rent should be fixed u/s 10 (4). The RCA vide order dated 30-4-2003 held that the fixation of the standard rent should be with reference to Section 7 (2) (ii). Accordingly, Rs. 27/- p.m. standard rent has been fixed in respect of the suit house. Being aggrieved, petitioners preferred C.A. No. 60-A/2003 before the V ADJ, Jabalpur. The Court below affirming the order aforesaid passed by RCA, dismissed the appeal vide impugned order dated 28-10-2003.

It is contended that the RCA and the Court below wrongly held that the suit house being a construction of prior to 1948, Section 10 shall not apply and the standard rent should be fixed in accordance with Section 7 (2) (ii). As per the certified copy of assessment register of Municipal Corporation for the years 1943-44 to 1947-48, the suit house was assessed on the basis of Rs. 2/- p.m. said to have been paid by the then tenant. Section 7 (2) (ii) is to the effect, where the accommodation was not let out on or before the 1st day of January, 1948, the rent of that accommodation as shown in the Municipal Assessment Register or as could be realized on the 1st day of January, 1948, whichever is less shall be deemed to be standard rent in relation to the said accommodation. On the basis aforesaid, the RCA vide order dated 30-4-2003 held that the suit house was constructed prior to the year 1948, as such, the standard rent should be determined with reference to Section 7 (2) (ii).

Petitioners placing reliance on a decision of this Court in Smt. Shanti Verma v. Union of India 1973 MPLJ 56, contended that in a case where there are several assessments, provision of Section 7 (3) shall not be applicable and the RCA ought to have been decided the question of fixation of standard rent u/s 10 (4) of the Act. In Smt. Shanti Verma v. Union of India (supra) it has been held :--

"6. Clause (a) of Sub-section (3) does not in terms enact as to which municipal assessment is to be taken to be the basis when the accommodation has been subject of more than one assessment at the time when the application for fixation of standard rent is made. It would be seen that Clause (c) of Sub-section (3), which defines standard rent with reference to rent agreed upon between the landlord and tenant when the accommodation is first let out, clearly uses the word "first" to show that subsequent lettings have to be ignored for the purposes of this clause. The word "first" has not been used in Clause (a). The acceptance of the construction suggested by the learned Counsel for the respondent will require reading of the word "first" in between the words "such" and "assessment" as they occur towards the end of Clause (a). Similarly, (SIC) of the construction suggested by the learned Counsel for the appellant will require reading of the word "last" in between the words "such" and "assessment". I do not find any definite guidance by reading the section as a whole for addition of either of these words. Clauses (a) and (b) as they stand can be applied to cases where there is only one assessment at the time when the application for standard rent is made and there can be no difficulty in operation of the clause in these cases. Thus, it is not correct to say that unless the word "first" or "last" added in Clause (a) the clause would be meaningless and would not be effective in any case. As the

clause as it stands can be given effect to without addition of any word, it would not be proper to add words in it so as to enlarge its scope of operation. It is well settled that additional words can not be read in any statutory enactment unless it is absolutely necessary to do so. In the instant case as Clause (a) can have some operation without the addition of any words, I am not inclined to accept either of the constructions suggested by the learned Counsel, because both the constructions require reading of words in Clause (a) which are not there. I would confine the operation of Clauses (a) and (b) to those cases where there has been only one assessment at the time when the application for fixation of standard rent is made.

Learned Counsel for the parties agree that Clause (c) of Sub-section (3) of Section 7 can apply only when the facts necessary to be determined under Sub-clauses (i) and (ii) of that clause have been proved. In this case, although there is evidence with respect to rent agreed upon between the landlord and tenant when the accommodation was first let out, which is required to be proved under Sub-clause (i), there is no evidence of the actual cost of construction and the market price of the land on the date of the commencement of the construction. Thus, there is no material to apply Sub-clause (ii) of Clause (c). As there is no material for application of Sub-clause (ii), according to the view accepted in this Court, Clause (c) as a whole can not be applied. The position then is that the standard rent can not be fixed on the principles set forth u/s 7 and the Rent Controlling Authority should have fixed the standard rent on the principles indicated in Sub-section (4) of Section 10 of the Act. Under Sub-section (4), the Rent Controlling Authority may fix such rent as standard rent as would be reasonable having regard to the situation, locality and condition of the accommodation and the amenities provided therein and where there are similar or nearly similar accommodation in the locality having regard also to the standard rent payable in respect of such accommodations. It is this clause which would apply to the present case."

The dictum aforesaid laid down in *Smt. Shanti Verma v. Union of India* (supra) has been read with approval by a Division Bench of this Court in *S.K. Nanhoria v. V.J. Dowson* 1997 (2) MPLJ 409. In the instant case, referring to assessments (Exs. D-1 to D-9) the petitioners were able to demonstrate that there has been more than one assessment. Therefore, on the basis of first assessment (Exhibit P-1) of the years 1943-44 to 1947-48, the standard rent of suit house ought not to have been determined with reference to Section 7 of the Act. In the instant case, the assessment of standard rent should be on the basis of Section 10 (4) of the Act. Therefore, the Courts below acted with material irregularity-illegality in ascertaining the standard rent of the suit house.

Consequently, revision is allowed. Setting aside the order impugned, the case is remanded to the RCA for determination of standard rent of suit house with reference to Section 10 (4) of the Act. No order as to costs."

Learned Counsel for the applicants states that in the instant case, there was only

one assessment of the year 1948, therefore, the order directing RCA for determination of a standard rent of suit house with reference to Section 10 (4) of the Act is erroneous. An order being erroneous can not be a ground for review. No mistake or error apparent on the face of record has been pointed out.

Consequently, the application for review fails and is dismissed. No order as to costs.